

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REX – REAL ESTATE EXCHANGE,
INC.,

Plaintiff,

v.

ZILLOW, INC., et al.,

Defendants.

C21-0312 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) The motion to exclude certain opinions of David Evans, Ph.D., docket no. 341, brought by defendants Zillow, Inc., Zillow Group, Inc., Zillow Homes, Inc., Zillow Listing Services, Inc., and Trulia, LLC (collectively, “Zillow”), is GRANTED in part and DEFERRED in part as follows:

a. The motion is GRANTED as it relates to Dr. Evans’s opinions regarding (i) relevant antitrust markets and alleged monopoly power, and (ii) whether Zillow’s compliance with the no-commingling rule harms competition. *See* Evans Report, Tbl. of Contents at C.1 & C.5, Ex. 18 to Najemy Decl. (docket no. 345-13). These opinions are no longer relevant in light of the dismissal of the antitrust claims brought by plaintiff REX – Real Estate Exchange, Inc. (“REX”). *See* Order (docket no. 461).

b. The motion is otherwise DEFERRED to the Pretrial Conference. At the Pretrial Conference, counsel shall be prepared to address whether Dr. Evans should be permitted to testify at trial that (i) the Buyer Broker Commission Rule has suppressed competition and resulted in uniform commission rates that are twice as high as competitive rates, (ii) Zillow’s compliance with the no-commingling rule resulted in substantial degradation of non-multiple listing service listings on Zillow’s platforms, (iii) Zillow’s compliance with the no-commingling rule forced REX to exit the relevant market, and (iv) his calculation of REX’s enterprise value is an appropriate measure of damages for REX’s false advertising and Consumer Protection Act claims. *See* Evans Report, Tbl. of Contents at C.2, C.3, C.4, and C.6.

1 (2) Having reviewed the parties' Joint Status Report, docket no. 466, the Court
ORDERS as follows:

2 a. The Court will select the jury in this action remotely using the
3 ZoomGov platform.

4 b. At the parties' request, the Court will not conduct trial on Monday,
September 25, 2023.

5 c. The Pretrial Conference set for September 8, 2023, at 10:00 a.m.,
6 will be conducted in person at the United States Courthouse in Seattle and all trial
counsel must attend.

7 d. At the Pretrial Conference, the Court will determine certain
8 evidentiary matters and the anticipated length of trial in light of its recent Orders.

9 e. The parties are DIRECTED to address in their respective trial briefs
whether the Court should admit:

10 i. Any evidence of REX's now-dismissed antitrust claims;

11 ii. Any evidence or testimony regarding the Buyer Broker
Commission Rule;

12 iii. Any communications not involving Zillow by the National
13 Association of REALTORS® or its affiliated multiple listings services; and

14 iv. Any evidence of prevailing real estate commission rates in the
United States or elsewhere.

15 f. The parties are further DIRECTED to address in their respective trial
16 briefs the deferred portions of Zillow's motion to exclude certain opinions of
Dr. Evans, docket no. 341.

17 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of
record.

18 Dated this 23rd day of August, 2023.

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20 Ravi Subramanian
Clerk

21 s/Laurie Cuaresma
22 Deputy Clerk
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